

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Transfer Application) FINAL ORDER
T-12861, Baker County) APPROVING AN
) ADDITIONAL POINT OF DIVERSION

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

ARMACOST INVESTMENTS, LLLP
P.O. BOX 219
NEW MEADOWS, ID 83654

Findings of Fact

1. On March 5, 2018, ARMACOST INVESTMENTS, LLLP filed an application to change the point of diversion under Certificate 10446. The Department assigned the application number T-12861.
2. Notice of the application for transfer was published on March 13, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 31, 2018, the applicant amended the application for an additional point of diversion instead of a change in point of diversion.
4. On June 1, 2018, the watermaster submitted a revised watermaster review after the changes to the transfer application.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

5. On May 21, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12861 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of June 21, 2018, for the applicants to respond. The applicants requested the completion date be extended to October 1, 2023 and for the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
6. On September 20, 2018, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12861 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on September 25, 2018, and in the Hells Canyon Journal newspaper on September 26 and October 3, 2018, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

7. The portion of the right to be transferred is as follows:

Certificate: 10446 in the name of H.C., and L.J. PRITCHARD (confirmed by the Pine Creek Decree, Baker County)
Use: IRRIGATION OF 73.0 ACRES AND DOMESTIC AND STOCK USE
Priority Date: 1877 FOR TRACT NO. 1 AND 1879 FOR TRACT NO. 2
Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE-FORTIETH of a cubic foot per second per acre, measured at the point of diversion, and a total limitation of 1.0 acre-foot per acre during July, 1.0 acre-foot per acre during August, and ½ acre-foot per acre during September of each year.
Source: EAST PINE CREEK, tributary to PINE CREEK

Authorized Place of Use:

TRACT 1 - 1877					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	46 E	WM	14	SE NE	30.0

TRACT 2 - 1879					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	46 E	WM	14	SW NE	38.0
8 S	46 E	WM	14	SE NE	5.0
Total					43.0

8. Certificate 10446 does not describe the location of the points of diversion, however information is available from the Powder River Decree and the Decree map indicating the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Ditch Name
8 S	46 E	WM	10	NW SE	Buck & Anderson Ditch
8 S	46 E	WM	14	SW NE	Cureless Ditch

- Transfer Application T-12861 proposes an additional point of diversion approximately 1.4 miles from the Buck and Anderson ditch and 0.25 mile from the Cureless Ditch downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	46 E	WM	14	NE NE	PUMP STATION - 1240 FEET SOUTH AND 94 FEET WEST FROM THE NE CORNER OF SECTION 14

- The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

Transfer Review Criteria [OAR 690-380-4010(2)]

- Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-12861.
- The proposed change would not result in enlargement of the right.
- The proposed change would not result in injury to other water rights.
- All other application requirements are met.

Conclusions of Law

The additional point of diversion proposed in Transfer Application T-12861 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

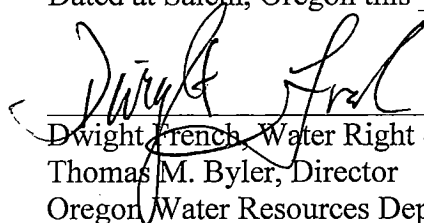
Now, therefore, it is ORDERED:

- The additional point of diversion proposed in Transfer Application T-12861 is approved.
- The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 10446 and any related decree.
- Water right Certificate 10446 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
- The quantity of water diverted at the additional point of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.

5. Prior to diverting water, the water user shall install a headgate at the Buck and Anderson ditch to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.
6. Water use measurement conditions:
 - a. **Before water use may begin** under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each new point of diversion and a suitable measuring device at the Buck and Anderson ditch.
 - b. The water user shall maintain the meters or measuring devices in good working order.
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
7. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.
9. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this NOV 21 2018,



 Dwight French, Water Right Services Administrator, for
 Thomas M. Byler, Director
 Oregon Water Resources Department

Mailing date: NOV 26 2018